

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF TACOMA TO THE PORT
OF TACOMA

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

v.

CITY OF TACOMA and PORT OF TACOMA,

Respondents.

SHB No. 75

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being a request for review of the issuance of a
shoreline management substantial development permit for the Port of
Tacoma marina at the Hylebos Waterway site having come on regularly for
hearing before the Shorelines Hearings Board on February 8 and 9,
May 8, 9 and 19 and May 20 and 21, 1974 at Tacoma, Washington and
appellants Washington State Department of Ecology and Attorney General

1 appearing through their attorney, Robert V. Jensen, Assistant Attorney
2 General, and respondent City of Tacoma appearing through its attorney,
3 William J. Barker, Assistant City Attorney and respondent Port of
4 Tacoma appearing through its attorney, James J. Mason; and Board members
5 present at the hearing being W. A. Gissberg (presiding) and Mary Ellen
6 McCaffree, Arden A. Olson, Robert E. Beaty, Robert F. Hintz and Walt
7 Woodward; and the Board having considered the sworn testimony, exhibits,
8 records and files herein and arguments of counsel and having entered
9 on the 25th day of September, 1974, its proposed Findings of Fact,
10 Conclusions of Law and Order; and the Board having served said proposed
11 Findings, Conclusions and Order upon all parties herein by certified
12 mail, return receipt requested and twenty days having elapsed from said
service; and

14 The Board having received no exceptions to said proposed Findings,
15 Conclusions and Order; and the Board being fully advised in the premises;
16 now therefore,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
18 Findings of Fact, Conclusions of Law and Order, dated the 25th day of
19 September, 1974, and incorporated by this reference herein and attached
20 hereto as Exhibit A, are adopted and hereby entered as the Board's
21 Final Findings of Fact, Conclusions of Law and Order herein.
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25

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington this 23rd day of October, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 Robert E. Beaty
6 ROBERT E. BEATY, Member

7 W. A. Gissberg
8 W. A. GISSBERG, Member

9 Robert F. Hintz
10 ROBERT F. HINTZ, Member

11
12 ARDEN A. OLSON, Member

13 CERTIFICATION OF MAILING

14 I, Dolores Osland, certify that I deposited in the United States
15 mail, copies of the foregoing document on the 24th day of
16 October, 1974, to each of the following-named parties, at the last
17 known post office address, with the proper postage affixed to the
18 respective envelopes:

19 Mr. Robert V. Jensen
20 Assistant Attorney General
21 Department of Ecology
22 St. Martin's College
23 Olympia, Washington 98504

24 Mr. William J. Barker
25 Attorney at Law
345 County-City Building
Tacoma, Washington 98402

Mr. James Mason
Attorney at Law
1008 South Yakima Avenue
Tacoma, Washington 98405

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Mr. Marshall W. Perrow, Architect
2 600 Commerce
Tacoma, Washington 98402

3 Port of Tacoma
4 P. O. Box 1837
Tacoma, Washington 98401

5 Mr. Russell C. Buehler, Director
6 Tacoma Planning Department
335 County-City Building
Tacoma, Washington 98402

7 Mr. Bob Stevens
8 Department of Ecology
St. Martin's College
9 Olympia, Washington 98405

10 Ms. Jeanne Bouton, et al.
11 3826 Marine View Drive N.E.
Tacoma, Washington 98422

12 Mr. J. J. Van Buskirk
Van Buskirk and Haas
5407 South Tacoma Way
Tacoma, Washington 98409

14 Dolories Osland
15 DOLORIES OSLAND, Clerk of the
16 SHORELINES HEARINGS BOARD
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PS.
Mason

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF TACOMA TO THE PORT
OF TACOMA

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

v.

CITY OF TACOMA, PORT OF TACOMA,

Respondents.

SHB No. 75

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The above numbered request for review of the issuance of a shoreline management substantial development permit was consolidated for hearing purposes only with SHB Nos. 72, 71 and 76, and a hearing thereon was held at Tacoma, Washington on February 8 and 9, May 8, 9 and 19, and May 20 and 21, 1974, before Board members W. A. Gissberg (presiding) and Mary Ellen McCaffree, Arden A. Olson, Robert E. Beaty, Robert F. Hintz and

EXHIBIT A

1 | Walt Woodward.

2 | Appellants Washington State Department of Ecology and Attorney
3 | General appeared through Robert V. Jensen, Assistant Attorney General;
4 | respondent City of Tacoma appeared through William J. Barker, Assistant
5 | City Attorney; respondent Port of Tacoma appeared through its attorney,
6 | James J. Mason.

7 | Having heard the testimony and considered the exhibits and post-
8 | hearing arguments, and being fully advised, the Board makes and enters
9 | these

10 | FINDINGS OF FACT

11 | I.

12 | The Port of Tacoma is a municipal corporation of the State of
; | Washington. Its jurisdictional boundaries are coterminous with those
14 | of Pierce County.

15 | II.

16 | The Port of Tacoma operates a marina for small pleasure and
17 | commercial vessels at Slip 3, Blair Waterway. It accommodates
18 | approximately 200 boats. This marina is unsuitably located because it
19 | is situated adjacent to terminals used by ocean-going vessels, creating
20 | hazards from collision, vessel wash, etc. The Port intends to close the
21 | existing marina when another location has been found for the boats.
22 | Commencing in 1967, the Port has conducted studies and investigations
23 | into the question of whether it should construct and operate a new marina
24 | in Pierce County. Such investigations disclosed that there is a need
25 | for approximately 1,000 wet moorages for small boats in the Tacoma area
which cannot be met by existing marina facilities. The Port since the

27 | FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

mid 1950s has repeatedly studied possible marina locations at Wollochet Bay, Gig Harbor, Day Island, the west shore of Commencement Bay, the City Waterway, and the Hylebos Waterway. Such investigations disclosed that the Hylebos Waterway was the most suitable location by reason of wind and current conditions, vessel traffic, access to the site, utilities, and other considerations essential to location of a marina.

III.

The Hylebos Waterway site selected by the Port consists of 25 acres, of which 20 acres are in the intertidal zone, situated on the east shore of Commencement Bay at the entrance to the Hylebos Waterway. At all times herein relevant the Port has been the contract purchaser of said premises.

The site is in an area which has for a long time been zoned for and committed to heavy industrial purposes. It is at the mouth of a waterway along whose banks are situated such industries as shipyards, chemical plants, a ship dismantling facility, a scrap metal yard and pier, etc. Under the terms of the relevant zoning and of the Recommended Master Program for Shoreline Development of the City of Tacoma, a marina is a permitted use of the site.

The site includes a sand bar or sand spit consisting of dredge fill which was dumped there about forty years ago. The sand bar or sand spit is of some value as a resting place for birds, and contributes to the habitat of fish in Hylebos Waterway. Construction of the marina will entail dredging the sand spit or sand bar, and filling an area of 11 acres shoreward of it to accommodate shore structures, parking and breakwaters.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IV.

The proposed marina at the Hylebos Waterway site will have no significant adverse environmental effect on marine life. The testimony of Anna Marie Johnstone, an expert marine biologist and a member of the Pierce County Master Program Citizen Advisory Committee established that invertebrate species are more prolific near marinas resulting in fish fry in abundance feeding on the organic material under marina floats and docks; a firm substrate, i.e., rocks, pilings and sunken material is more conducive to the development and growth of invertebrates than the two and one-half feet of mud now found at the site; that eel grass can naturally and quickly regenerate into a newly dredged area and can also be successfully transplanted to hasten the process.

V.

The City Waterway has been extensively investigated as a potential site for the Port marina. It is possible that a marina may be located in the City Waterway at some time, but at present and in the near future it is not a practical marina site. The City Waterway from its entrance to the bridge at South 15th Street is heavily built up with industrial and commercial buildings. The west side of the Waterway, where the marina would have to be placed, is devoted to such uses along virtually its entire length. Dock Street, a heavily travelled city street, serves such industries on their sides away from the water, and on the other side of Dock Street is the Burlington Northern main line right of way, with associated yards, structures, etc. There is no feasible way of providing parking for a marina, and sanitary sewer service is not now available in the area. City Waterway is regularly

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 traversed by log rafts, tug and barge traffic, and vessels from
2 Martinac Shipbuilding Co., a shipyard adjacent to the South 15th Street
3 bridge. The presence of a small boat marina in the Waterway would
4 create a hazard of collision and wave damage caused by the presence of
5 such traffic.

6 The portion of City Waterway south of the South 15th Street bridge
7 includes possible sites for a future marina. The bridge, which is a
8 combination road and railroad bridge owned by the Burlington Northern
9 Railroad, is a swing drawbridge which is normally maintained in a closed
10 position. At high water there is a clearance of three to four feet
11 beneath the closed bridge. Such clearance is grossly insufficient for
12 the safe passage of small boats. It is not practical to normally
13 maintain the bridge in an open position or to open and close it for the
14 large numbers of small boats which would be generated by a marina.
15 There are no immediate plans for removal or replacement of the bridge.
16 As long as the present bridge remains the portion of City Waterway south
17 of South 15th Street is not a practical location for a marina. The
18 portion north of South 15th Street is not a practical location for a
19 marina for the reasons hitherto stated.

20 If a marina were to be built in the City Waterway in the future,
21 it would accommodate approximately 200 boats. The demand for small
22 boat moorages in the Tacoma area is sufficient to support both the
23 Port marina at the Hylebos site and such a marina in City Waterway.

24 VI.

25 The Port marina project is a major action which significantly
affects the environment. The Port of Tacoma submitted a draft

27 FINDINGS OF FACT,
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1 environmental impact statement, received comments thereon, and responded
2 to such comments in a final environmental impact statement, all in proper
3 form and in conformity with the Environmental Policy Act of 1971,
4 chapter 43.21C RCW.

5 VII.

6 The Port marina is a substantial development on shorelines of this
7 state. On December 18, 1973 the City Council of the City of Tacoma
8 approved a substantial development permit for the marina pursuant to
9 the Shoreline Management Act of 1971, chapter 90.58 RCW. Following
10 hearings by this Board on February 8 and 9, 1974, the matter was
11 remanded to the City Council for resolution of an apparent ambiguity
12 in the permit, arising from the presence in the environmental impact
13 statement and other supportive documents of differing drawings of the
14 proposed marina. In April, 1974 the City Council reissued the permit
15 and annexed thereto a set of drawings which resolved such ambiguity.
16 The permit as reissued is unambiguous and complies with the Shoreline
17 Management Act of 1971 in all respects.

18 VIII.

19 The Port of Tacoma marina is designed in a manner which will
20 protect fish and shellfish resources and will be aesthetically
21 compatible with surrounding areas. Among its design features are
22 openings in the breakwater to allow free migration of fish, and a
23 restriction upon covered boat stalls so as to present an attractive
24 and interesting view of the moorages. The openings in the solid
25 breakwater will eliminate any potentially detrimental effects on the
movement of sand and the circulation of water.

27 FINDINGS OF FACT,
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IX.

The Port of Tacoma marina will be a recreational location serving a substantial portion of the general public. There is at present no access to the water on the east shore of Commencement Bay except by going upon private property. The marina will furnish such access to the general public. It is a type of public recreational facility for which there is a substantial and growing need in the Tacoma area.

X.

No evidence was adduced to show that a floating breakwater which would withstand the substantial wave action at the site could at a reasonable cost be incorporated in the Port of Tacoma marina instead of a fill bulkhead.

XI.

All or part of the Hylebos marina site is within the boundaries of the Puyallup Indian Reservation.

XII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From the foregoing Findings of Fact the Board draws the following

CONCLUSIONS OF LAW

I.

The Board has jurisdiction of the parties and of the subject matter.

II.

The substantial development permit granted for the Port of Tacoma marina at the Hylebos Waterway site is consistent with the terms, purpose and interest of the Shoreline Management Act of 1971,

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 RCW 90.58.020, the Guidelines of the Department of Ecology, WAC 173-16-010
2 to 173-16-200, and the Recommended Master Program for Shoreline
3 Development of the City of Tacoma.

4 III.

5 The environmental impact statement and other documents filed in
6 support of the Port of Tacoma's application for a substantial development
7 permit for the marina, together with the actions taken by the City of
8 Tacoma with reference to such application, comply with the Environmental
9 Policy Act of 1971, chapter 43.21C RCW.

10 IV.

11 There was a reasonable investigation and discussion of the
12 environmental effects of this and alternative marina sites, and sufficient
13 information was presented to permit a reasoned choice of alternatives.
14 The alternatives required to be discussed by the Environmental Policy
15 Act are those which are reasonably available.

16 V.

17 Department of Ecology Guidelines relating to filling, breakwaters
18 and vehicular parking are not mandatory, but are suggestive and
19 flexible dependent upon local conditions (WAC 173-16-060). Under the
20 conditions at the Hylebos marina site, the filling, breakwaters and
21 parking contemplated by the substantial development permit are
22 appropriate and reasonable and within the intent of such Guidelines.

23 VI.

24 The proposed marina at the Hylebos Waterway site, including its
25 appurtenant structures, is a water-dependent use of such site.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

VII.

The action of the City Council of the City of Tacoma in granting the substantial development should be sustained, and the permit should be approved as valid.

VIII.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Shorelines Hearings Board issues this

ORDER

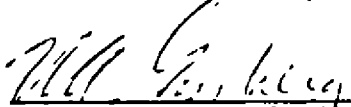
The action of the City Council of the City of Tacoma in granting the substantial development permit for the Port of Tacoma marina at the Hylebos Waterway site is sustained. The permit is approved as valid.

DATED this 25th day of September, 1974.

SHORELINES HEARINGS BOARD

WALT WOODWARD, Chairman

ROBERT E. BEATY, Member



W. A. GISSBERG, Member



ROBERT F. HINTZ, Member



ARDEN A. OLSON, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER.

1 WE DISSENT:

2 The majority in this instance has adopted the defensible position
3 that lands and shorelines already devoted to industrial siting are the
4 best suited for further industrial expansion. In so doing they have
5 unfortunately abdicated responsibility for the maintenance of the
6 environment in this intensively used area. The Hylebos Waterway is
7 currently one of the worst examples of ill-planned industrial siting in
8 the Puget Sound Basin. This heavily developed harbor area to the north
9 of Tacoma is devoted to industrial uses because of the simple fact that
10 it was cheap to fill and build manufacturing and other industrial plants
11 with no regard for the precious environmental resource that was depleted
12 thereby.

3 However, Nature has managed to survive at the outer limits of this
14 industrial area and the Hylebos Waterway has become one of the more
15 important areas for the feeding and resting of migrating water fowl
16 in this area of Puget Sound. In addition, birds and fish inhabit the
17 area with salmon fry of at least two different varieties and herring
18 being the most common game fish present.

19 The state has argued that the survival of the fish life and the
20 wild fowl on this site as well as the natural littoral drift of the
21 shoreline would be enhanced by the use of floating docks, and break-
22 waters. Floating docks and breakwaters as opposed to piling docks and
23 rock filled breakwaters allow the natural water currents to maintain the
24 shoreline and provide shallow water to protect fish fry. Otherwise,
25 small salmon are driven out into deeper waters and are there subject to
predation.

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1 The majority, in its letter to the parties, said that there was no
2 evidence to prove the assertion that floating docks would be either,
3 economic or structurally possible in this marina complex. However, the
4 uncontroverted evidence of one of the respondents' own witnesses,
5 Marshall Perrow, is to the contrary. This prominent marine architect,
6 who has built boat facilities from Aden to Dutch Harbor and is
7 unquestionably expert in this whole area, testified directly to the
8 contrary. His expert testimony is clearly that the capability for
9 such design exists and is less costly than the earth moving techniques
10 proposed by the Port of Tacoma. The site is well suited for such design
11 with the prevailing three foot wave crest on this shore. The contemplated
12 design would allow the continued free flow of the water, would allow
13 the use of these waters by the native fish and would be far superior to
14 the scheme contemplated by the Port of Tacoma. Indeed, the Port seems
15 to be imposing a costly scheme of overbuilding this marina on the public
16 where the private sector (see decision, SHB No. 76) has made the effort
17 to determine the most efficient and economic means of serving those boat
18 owners in its marina. This, coupled with environmental considerations,
19 argues clearly against the Port proposal. The Port's witness was
20 clearly ignorant of the latest technological resources available in this
21 area as they were elucidated by Mr. Meaker's architect. It is possible
22 that the proposed design modifications would enable the bird life in
23 this area to survive to some extent as well.

24 The respondents themselves introduced evidence that the eel grass
25 which is such an important part of the food chain in this estuary could
be easily restored and might indeed regenerate itself. However, the

27 FINDINGS OF FACT,
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1 Board has not seen fit to require eel grass restoration. In addition,
2 the existing sandspit which plays an important role in the life
3 surrounding this area was artificially created and could be easily
4 restored with the 30,000 cubic yards of dirt that will be removed from
5 the proposed basin; it is then possible that some of the bird life here
6 would continue to have the means to sustain itself. The evidence was
7 clearly adduced that once the habitat was gone the birds would have
8 nowhere to go and would disappear if their feed source disappeared. The
9 Christmas bird count of the Audubon Society at this site indicates that
10 there are many species of birds nesting or feeding in this area
11 including the Western Grebe, which is nationally an endangered species,
12 as well as Gadwalls and Hooded Mergansers which are otherwise not seen
} in the Tacoma area.

14 Indeed, a quick look at the evidence reveals a wide variety of bird
15 life that would not be otherwise seen in proximity to a major urban
16 area such as Tacoma. The available feeding sites for these animals in
17 Puget Sound are disappearing; one of the major sites was destroyed for
18 all but those species that are most adaptable to man with the construction
19 of the Day Island Marina. The testimony was adduced that the birds
20 won't go elsewhere and the marina will destroy them. To make no effort
21 to save them is both contrary to the Shoreline Management Act and the
22 master plan of the City of Tacoma which provides that we should encourage
23 the preservation of fish and wildlife for future generations.

24 The respondents argued that a new order of life will emerge around
25 the piers and bulkheads of the marina. These species will develop
around the food chain that begins with the barnacles and other animals

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CONCLUSIONS OF LAW AND ORDER

1 that grow naturally on bulkheads and rock riprap. While this will
2 mean a varied and rich ecological system around the marina, it is
3 unfortunately the case that these species are not endangered. As more
4 industrial and other development occurs on the shorelines we are seeing
5 more havens for these kinds of fish throughout the Puget Sound. The
6 environment for salmon fry and herring and the birds in question is
7 disappearing and this should be the paramount interest in dealing with
8 wild life which has somehow survived adjacent to this sprawling
9 industrial complex in the Hylebos area. We must attempt to preserve
10 those species which require the natural shoreline. Any other
11 interpretation would be contrary to the intent of the Act. To do this
12 we must design the site in such a way that it will make the greatest
13 possible effort to help preserve the existing eco-system here. We must
14 find a way to design with nature rather than bulldozing it aside and
15 stacking up rocks and saying that the new life forms which grow up
16 around them are suitable substitute for the endangered species of the
17 Puget Sound area. We have an opportunity here to undertake a positive
18 and innovative attempt to minimize the environmental damage of this
19 project. Both the technology and the funds are available. The imposition
20 of such standards should be preferable for the Port because it would
21 save money. Indeed, the private developer in a related case has found
22 it monetarily possible to do so. We believe that the evidence is clear
23 that this is both desirable and feasible on the site and we should
24
25

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CONCLUSIONS OF LAW AND ORDER

1 make a reasoned attempt to impose higher standards than have been
2 adopted by the Board in this instance. For these reasons, we dissent.

3 DONE at Lacey, Washington this 25th day of September, 1974.
4 ~~June~~ 1975.

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6 ROBERT E. BEATY, Member

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8 WALT WOODWARD, Chairman

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF TACOMA TO THE PORT
OF TACOMA

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

vs.

CITY OF TACOMA, PORT OF TACOMA
and JOHN E. MEAKER,

Respondents.

SHB No. 76

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being a request for review of the issuance of a
Shoreline Management Substantial Development Permit; having come on
regularly for hearing before the Shorelines Hearings Board on the
8th and 9th of February, 8th, 9th, 19th, 20th and 21st days of May,
1974, at Tacoma, Washington; and appellants, Washington State Department
of Ecology and Attorney General, appearing through Robert V. Jensen,

1 Assistant Attorney General and respondent, John E. Meaker, appearing
2 through his attorney, John J. Van Buskirk; and Board members present
3 at the hearing being W. A. Gissberg (presiding), Mary Ellen McCaffree,
4 Arden A. Olson, Robert F. Hintz, Walt Woodward and Robert E. Beaty.
5 and the Board having considered the sworn testimony, exhibits, post-
6 hearing arguments, records and files herein and having entered on the
7 4th day of September, 1974, its proposed Findings of Fact, Conclusions
8 of Law and Order, and the Board having served said proposed Findings,
9 Conclusions and Order upon all parties herein by certified mail, return
10 receipt requested and twenty days having elapsed from said service; and

11 The Board having received no exceptions to said proposed Findings,
12 Conclusions and Order; and the Board being fully advised in the premises;
13 now therefore,

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
15 Findings of Fact, Conclusions of Law and Order, dated the 4th day of
16 September, 1974, and incorporated by this reference herein and attached
17 hereto as Exhibit A, are adopted and hereby entered as the Board's
18 Final Findings of Fact, Conclusions of Law and Order herein.

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

DONE at Lacey, Washington, this 30th day of October, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

W. A. Gissberg
W. A. GISSBERG, Member

Robert E. Beaty
ROBERT E. BEATY, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Arden A. Olson
ARDEN A. OLSON, Member

FINAL FINDINGS OF FACT,
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AND ORDER

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
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Appellants,

v.

CITY OF TACOMA, PORT OF TACOMA
and JOHN E. MEAKER,

Respondents.

SHB No. 76

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The above-numbered request for review of the issuance of a
Shoreline Management Substantial Development Permit was consolidated
for hearing purposes only with SHB Nos. 71, 72 and 75 and the hearing
thereon was held at Tacoma, Washington on February 8 and 9, May 8, 9,
19, 20 and 21, 1974 before Board Members W. A. Gissberg (presiding),
Mary Ellen McCaffree, Arden A. Olson, Robert F. Hintz, Walt Woodward

EXHIBIT A

and Robert E. Beaty.

Appellants Washington State Department of Ecology and Attorney General appeared through Robert V. Jensen, Assistant Attorney General; respondent John E. Meaker appeared through his attorney John J. Van Buskirk.

Having heard the testimony and considered the exhibits and post-hearing arguments, and being fully advised, the Board makes and enters these

FINDINGS OF FACT

I.

John E. Meaker owns a site on the Hylebos Waterway, which consists of 12.6 acres comprised of tidal, intertidal and uplands. The site is on the east side of the Hylebos Waterway, directly adjacent and to the north of the Port of Tacoma Hylebos Marina site.

The site is in an area which has for a long time been zoned for and committed to heavy industrial purposes. It is outside of the mouth of the Waterway along whose banks are situated such industries as shipyards, chemical plants, a ship dismantling facility, a scrap metal yard and pier, etc. Under the terms of the relevant zoning and of the Recommended Master Program for Shoreline Development of the City of Tacoma, a marina is a permitted use of the site.

The upland part of the site consists of a narrow strip of land averaging some 22 feet from the shoulder of Marine View Drive to the edge of the bank and high water mark. The site is approximately 373 feet in length along Marine View Drive.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

II.

The proposed marina at the site owned by John E. Meaker will have no significant adverse environmental effect on marine life. The testimony of Anna Marie Johnstone, an expert marine biologist and a member of the Pierce County Master Program Citizen Advisory Committee, established that invertebrate species are more prolific near marinas resulting in fish fry in abundance feeding on the organic material under marina floats and docks; a firm substrate, i.e., rocks, pilings and sunken material is more conducive to the development and growth of invertebrates than the mud and log debris now found at the site; that eel grass can naturally and quickly regenerate into a newly dredged area and can also be successfully transplanted to hasten the process.

III.

The City Waterway has been extensively investigated as a potential site for a marina. It is possible that a marina may be located in the City Waterway at some time, but at present and in the near future, it is not a practical marina site. The City Waterway from its entrance to the bridge at South 15th Street is heavily built up with industrial and commercial buildings. The west side of the Waterway, where the marina would have to be placed, is devoted to such uses along virtually its entire length. Dock Street, a heavily travelled city street, serves such industries on their sides away from the water, and on the other side of the Dock Street is the Burlington Northern main line right of way, with associated yards, structures, etc. There is no feasible way of providing parking for a marina, and sanitary sewer

service is not now available in the area. City Waterway is regularly traversed by log rafts, tug and barge traffic, and vessels from Martinac Shipbuilding Co., a shipyard adjacent to the South 15th Street bridge. The presence of a small boat marina in the Waterway would create a hazard of collision and wave damage caused by the presence of such traffic.

The portion of City Waterway south of the South 15th Street bridge includes possible sites for a future marina. The bridge, which is a combination road and railroad bridge owned by the Burlington Northern Railroad, is a swing drawbridge which is normally maintained in a closed position. At high water there is a clearance of three to four feet beneath the closed bridge. Such clearance is grossly insufficient for the safe passage of small boats. It is not practical to normally maintain the bridge in an open position or to open and close it for the large numbers of small boats which would be generated by a marina. There are no immediate plans for removal or replacement of the bridge. As long as the present bridge remains the portion of City Waterway south of South 15th Street is not a practical location for a marina for the reasons hitherto stated.

If a marina were to be built in the City Waterway in the future, it would accommodate approximately 200 boats. The demand for small boat moorages in the Tacoma area is sufficient to support the Meaker Marina and Port Marina at the Hylebos site and such a marina in City Waterway.

IV.

The Meaker Marina project is a major action which significantly

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 affects the environment. John E. Meaker submitted a draft environ-
2 mental impact statement, received comments thereon, which were
3 responded to in a final environmental impact statement, all in proper
4 form and in conformity with the Environmental Policy Act of 1971, .
5 chapter 43.21C, RCW.

6 V.

7 The Meaker Marina is a substantial development on shorelines
8 of this state. On the 6th day of February, 1974, the City Council
9 of the City of Tacoma approved a substantial development permit for
10 the marina pursuant to the Shorelines Management Act of 1971, chapter
11 90.58, RCW. Following hearings by this Board, on February 8 and 9,
12 1974, SHB No. 75, which had been consolidated with SHB Nos. 76, 71
13 and 72 was remanded to the City Council for resolution of an apparent
14 ambiguity in the permit and thereafter rescheduled hearings were
15 held on May 8, 9, 19, 20 and 21, 1974. The permit issued to John
16 E. Meaker complies with the Shorelines Management Act of 1971 in
17 all respects.

18 VI.

19 The Meaker Marina is designed in a manner which will protect
20 fish and shellfish resources and will be aesthetically compatible with
21 surrounding areas. Among its design features is a floating breakwater
22 to allow free migration of fish, and a restriction upon covered boat
23 stalls so as to present an attractive and interesting view of the
24 moorages. The design of the Meaker Marina calls for a landfill area
25 of approximately 3.1 acres which would build up an elevation of 18 feet
26 to above mean lower low water, which will be used for parking and

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 other water related structures.

2 VII.

3 The marina site is located on Marine View Drive, an arterial
4 street which at this point runs along the east shore of Commencement
5 Bay at the foot of a cliff several hundred feet high. The Meaker
6 Marina will be a recreational location serving a substantial portion
7 of the general public, providing for approximately 318 berths for
8 pleasure boats in that location. The marina will furnish access to
9 the general public and it is a type of public recreational facility
10 for which there is a substantial and growing need in the Tacoma area.

11 VIII.

12 All or part of the marina site is within the boundaries of the
13 Puyallup Indian Reservation.

14 IX.

15 Any Conclusion of Law hereinafter recited which should be deemed
16 a Finding of Fact is hereby adopted as such.

17 From the foregoing Findings of Fact the Board draws the following

18 CONCLUSIONS OF LAW

19 I.

20 The Board has jurisdiction of the parties and of the subject
21 matter.

22 II.

23 The substantial development permit granted to John E. Meaker for
24 a marina at the Hylebos Waterway site is consistent with the terms,
25 purposes and interest of the Shoreline Management Act of 1971,
26 RCW 90.58.020, the Guidelines of the Department of Ecology,

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 WAC 173-16-010 to 173-16-200, and the Recommended Master Program for
2 Shoreline Development of the City of Tacoma.

3 III.

4 The draft of the environmental impact statement and the final -
5 environmental statement prepared for John E. Meaker and other documents
6 filed in support of the John E. Meaker application for a substantial
7 development permit for a marina, together with the actions taken by
8 the City of Tacoma with reference to such application, comply with the
9 Environmental Policy Act of 1971, chapter 43.21C, RCW.

10 IV.

11 There was a reasonable investigation and discussion of the
12 environmental effects of this and alternative marina sites, and
13 sufficient information was presented to permit a reasoned choice of
14 alternatives. The alternatives required to be discussed by the
15 Environmental Policy Act are those which are reasonably available.

16 V.

17 Department of Ecology Guidelines relating to filling, breakwaters
18 and vehicular parking are not mandatory, but are suggestive and
19 flexible dependent upon local conditions. Under the conditions at the
20 Meaker Marina site on the Hylebos Waterway, the facilities contemplated
21 by the substantial development permit are appropriate and reasonable
22 and within the intent of such guidelines.

23 VI.

24 The proposed marina by John E. Meaker at the Hylebos Waterway
25 site and its appurtenant structures is a water-dependent use of
26 such site.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

VII.

The action of the City Council of the City of Tacoma in granting the substantial development permit should be sustained, and the permit should be approved as valid.

VIII.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Shorelines Hearings Board issues this

ORDER

The action of the City Council of the City of Tacoma in granting the substantial development permit of a marina by John E. Meaker at the Hylebos Waterway site is sustained. The permit is approved as valid.

DATED this 4th day of September, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Robert E. Beaty
ROBERT E. BEATY, Member

W. A. Gissberg
W. A. GISSBERG, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Arden A. Olson
ARDEN A. OLSON, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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T. intercutting

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
GRAYS HARBOR COUNTY TO)
BRUCE M. FERGUSON)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
ATTORNEY GENERAL,)

Appellants,)

vs.)

GRAYS HARBOR COUNTY and)
BRUCE M. FERGUSON,)

Respondents.)

SHB No. 77

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A formal hearing on the request for review was held before the Board in Lacey, Washington on June 8, 1973 where respondent, Ferguson, appeared pro se; Grays Harbor County was represented by Marley Young, its assistant director of Department of Public Works; appellants were represented by Robert V. Jensen, assistant attorney general, with W. A. Gissberg, a member of the Board, presiding. Other Board members present

were Messrs. Beswick, Sheehy and Woodward.

This timber cutting permit appeal is a case of first impression with the Board. We therefore take this opportunity of calling attention to a matter not raised by the parties. Is the commercial cutting of timber a "development" which is subject to the permit system of the Shorelines Management Act? We do not believe it to be and reach that conclusion by an examination of the definition of "development" as found in the Act. See RCW 90.58.030(3)(d). The Department of Ecology appears to agree. Its forest management practices guidelines are contained in WAC 173-16-060(3) but are preceded by the following statement:

" . . . It should be noted that there are several guidelines for certain activities which are not explicitly defined in the Shoreline Act as developments for which substantial development permits are not required (for example, the suggestion that a buffer of permanent vegetation be maintained along water bodies in agricultural areas). While such activities generally cannot be regulated through the permit system, it is intended that they be dealt with in the comprehensive master program in a manner consistent with policy and intent of the Shoreline Act. . . ."

No objection having been made by respondents based upon the foregoing, they are deemed to have waived the same.

Having considered the transcript of the proceedings and the exhibits, the Board makes these

FINDINGS OF FACT

I.

On April 19, 1973, following publication of due notice thereof, Grays Harbor County granted to Bruce M. Ferguson Company, a Permit for Shoreline Management Substantial Development to undertake the harvest of timber by the clear-cutting method.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

II.

A timely request for review of the Permit was filed with this Board on June 4, 1973 by appellants, Department of Ecology and the Attorney General.

III.

Cedar Creek is a small stream affected by the tide and is a tributary of the Copalis River which empties into the Pacific Ocean in Grays Harbor County, Washington.

IV.

Respondent, Bruce M. Ferguson, a consulting forester who qualifies as an expert by virtue of his education and experience, has a timber management contract with one Lamb, owner of the land for which the Shoreline Management Act Permit was issued. Mr. Lamb owns 240 acres of land of which 100 acres thereof, containing 3.2 million board feet is the subject of a timber sale to Weyerhaeuser Company. Six or seven acres, containing about 500 thousand board feet of timber is intersected by Cedar Creek and has been designated by the Department of Ecology as "wetlands." It is this small tract, hereinafter called "site," which is the subject of the clear-cutting permit.

V.

The site, approximately 1½ miles from the ocean, is of a flat contour, and is bordered on the West by a County road.

VI.

The timber on the site is Western Hemlock, 70 to 90 years old, and that which is North of the Creek is of a tall, clean stand; however, 40 percent of the timber South of the Creek is infested with Mistletoe

1 and therefore not as economically desirable for growing stock.

2 . VII.

3 Little, if any, erosion would result from clear-cutting the timber
4 but that method of cutting is one means of controlling Mistletoe. The
5 site has a high water table which tends to cause shallow root systems.

6 VIII.

7 It is common knowledge, of which we take notice, that Western
8 Hemlock is a shade-tolerant species and seeds naturally under an overstory
9 of other trees; that the silvicultural practice of selective logging, in
10 this instance, will not limit natural regeneration.

11 From which comes these

12 CONCLUSIONS

13 I.

14 No contention having been made to the contrary this Board has
15 jurisdiction of the parties and subject matter of this review.

16 II.

17 Cedar Creek, at the site, is a natural shoreline of statewide
18 significance, and, as such, RCW 90.58.150 there prohibits the cutting of
19 timber by clear-cutting (within 200 feet abutting landward of the ordinary
20 high water mark of Cedar Creek) unless selective cutting is ecologically
21 detrimental due to topography, soil conditions or silvicultural
22 practices necessary for regeneration.

23 III.

24 The subject topography, soil conditions or silvicultural practices
25 necessary for regeneration do not render selective logging ecologically
26 detrimental.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

IV.

The Permit granted by Grays Harbor County which allows clear-cutting of timber within 200 feet of Cedar Creek must be reversed. The legislative purpose of prohibiting such a clear-cutting timber harvesting method is to assure, except in limited circumstances, none of which are present in this case, the preservation of a 200 foot buffer strip of timber adjacent to shorelines of statewide significance. That salutary purpose results in preserving the water quality and aesthetic values of the adjacent waterway. Indeed, RCW 90.58.020 recognizes that " . . . the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible . . . "

From which follows this

ORDER

1. The granting of the Permit allowing clear-cutting is reversed within that area of the site which is within 200 feet abutting landward of the ordinary high water mark of Cedar Creek. The measurement of 200 feet shall begin at that point of the Creek bank where the first vegetation having an upland character is indicated in this case by the line of trees and brush bordering the marshy area adjacent to Cedar Creek. In that 200 foot strip, only selective commercial timber cutting may occur so that no more than 30 percent of the merchantable trees may be harvested in any ten year period of time.

2. In such area of selective cutting, the present Permit requirement of replanting seedlings may be and is stricken.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

3. In other respects, the Permit is approved and affirmed.
DONE at Lacey, Washington this 27th day of June, 1973.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

W. A. Gissberg
W. A. GISSBERG, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Tracy J. Owen
TRACY J. OWEN, Member

James T. Sheehy
JAMES T. SHEEHY, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER